

October 8, 2020

State Records Committee Meeting

Date: October 8, 2020

Time: 9:00 a.m. – 3:00 p.m.

Committee Members Present:

Kenneth Williams, State Archivist

Mark Buchanan, Private Sector Records Manager

Patricia Smith-Mansfield, Chair, Citizen Representative

Tom Haraldsen, Media Representative

Marie Cornwall, Citizen Representative

Committee Members Not Present:

Vacant, Electronic Records and Databases Representative

Nancy Dean, Political Subdivision Representative

Legal Counsel:

Paul Tonk, Assistant Attorney General

Nicole Adler, paralegal

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Telephonic participation:

Balfour Ozwald

Others Present via Google Hangout:

Justin Anderson, Assistant Attorney General

Sandy Pett

Kendra Yates

Cameron Diehl, Utah League of Cities and Towns

Marie Owens

Susan Mumford

Paul McConkie, Division of Drinking Water

Lonny Pehrson, Assistant Attorney General

Linda Ross

Kim Vandal

Kim Shelley, Division of Drinking Water

Brady Eames

Bret Randall, Division of Drinking Water

Rosemary Cundiff

Nick Jarvis, Utah League of Cities and Towns

Bret Nelson

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Steven Onysko
Soldier Idaho

Agenda:

- Three Hearings Scheduled
 - Balfour Ozwald v. Department of Corrections
 - Brady Eames v. Utah League of Cities and Towns
 - Steven Onysko v. Division of Drinking Water
- Business:
 - Oath of Office for new committee members, action item
 - Approval of September 24, 2020, SRC Minutes, action item
 - SRC appeals received and declined, notices of compliance, and related action items
 - Cases in district court, report
 - Welcoming new committee members
 - Committee members' attendance polled for next meeting, format and quorum verification

Call to Order

The State Records Committee Chair, Patricia Smith-Mansfield, called the meeting to order at 9:03 a.m.

Business part 1 of 2

The Chair asked the two new Committee members to introduce themselves. Mr. Buchanan introduced himself. Ms. Cornwall introduced herself.

The Chair read a letter stating the meeting will be held electronically and telephonically without an anchor location pursuant to Utah Code 52-4-207(4). The public may monitor the meeting and any public wishing to comment in the meeting can submit their request to the Executive Secretary. The letter is active for 30 days.

Ms. Mumford administered the Oath of Office for Mr. Buchanan and Ms. Cornwall.

1. Ozwald Balfour v. Department of Corrections

The Chair announced the hearing and provided instructions and reviewed the procedures.

Petitioner's statement:

Mr. Balfour stated access should be granted because no valid reason was given for denial. He stated his request was for files referencing him in the offender history report made after April 24, 2016. He stated that the respondent previously provided the first 42 pages of the offender history report in response to an earlier request.

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Mr. Balfour stated he provided the reference number and print date which appeared on each of the 42 pages previously released. On April 16, 2020, UDC denied his request. May 14, 2020, he appealed to the CAO.

He stated there is a specific record called the offender history report. It is not general. It was provided in 2016. The top of the page says the title of the record "Offender History Report". He provided a copy to the Committee. He stated an example of the requested record was provided. He stated UDC said they searched but could not locate it.

Mr. Balfour stated the argument that his request is not specific enough is inaccurate. He stated he has done everything required to comply with GRAMA and his appeal should be granted.

Question from Committee:

The Committee asked if Exhibit J was a result of a previous request for an offender history report. Mr. Balfour stated it is. He stated page 42 is the earliest record made and page 1 is the most recent. He stated he's seeking the remainder of that record made since the prior request.

Respondent's statement:

Mr. Anderson stated that he does not have Exhibit J, but it is likely a report run under the offender history options. He stated UDC does not dispute he has a right to the records, but the request lacks specificity. He stated Mr. Balfour requested a fee waiver and without specificity they cannot determine what the fee would be to determine if a fee waiver can be granted.

Mr. Anderson stated the initial response asked for more information so the requested records could be provided. He stated O Track is used to track offender history and there are various things listed as "offender history options" which constitute separate records such as medical, violations, c-notes, and programming. He stated "offender history" is an umbrella term and the petitioner needs to identify the subset he is seeking because inmates are only entitled to five records a year.

Question from Committee:

The Committee asked if each checkbox is a separate record request. Mr. Anderson stated each subset is a type of record which can be found and each is a series of records. The Committee stated they reviewed previous UDC appeals and offender history is common. Previously it came to the Committee because of a fee waiver, not specificity.

The Committee asked if something changed because it seems these requests were fulfilled before. Mr. Anderson stated if it comes from an attorney it is different. An attorney would want the whole umbrella and so the fee becomes the issue. Inmates are limited in the number of records they can have and the petitioner has declared himself indigent. He stated when someone not in prison requests the records, it's easier to provide the records. He stated inmates cannot receive everything because they are limited by statute.

The Committee asked if he means the statute stating they need to be the subject of the record. Mr. Anderson stated UDC does not dispute Mr. Balfour is the subject of the record, but he is

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only entitled to five records. If he is asking for records from 2016-present it will have hundreds of records and the entity should not choose which records he receives.

The Committee stated they believe the law is for five requests, not five records. The Committee asked if UDC's view is that each checkbox is a separate request, meaning before they would provide the whole umbrella, and now they require different requests. Mr. Anderson stated prior to the change in law inmates would request thousands of pages. He stated it's contained in one request but it's implied there is a separate request for each record. He stated the law allows one request to be separated into multiple requests. He stated one request form asking for many records would make that part of the statute meaningless. He stated UDC routinely provides more than five and grants fee waivers.

The Committee asked if he's referring to 63G-2-201(10). Mr. Anderson stated he is. He stated it is important to know record and record series have distinct definitions on GRAMA. He stated it's important that the law doesn't say record series requests, but a record request and inmates get five of those.

Petitioner closing:

Mr. Balfour stated he is in his case worker's office. He stated his case worker can access the record he is asking for. He stated an offender has many reports made. He stated he's seeking a specific record known as the Offender History Report. He stated he believes his case worker could pull it up easily. He stated this isn't a voluminous record. He stated the 42 pages he received in 2016 started in 2010 and ended in 2016. He stated 2016 to present might be another 42 pages. He stated the records he received in 2016 were received because he's entitled to the records even though he's limited to five. He stated the department is second guessing why he needs them. He stated he does not believe UDC is in any way confused about what records he seeks.

Mr. Balfour stated he provided the respondent with tracking information for what he received in 2016. He stated he understands there are many records an offender may have, but there is a record known as the Offender History Report, and that is what he is seeking. He stated he is indigent and entitled to copies without cost. He stated this is his second request for the year. He stated he provided specificity by providing information from the prior request.

Respondent closing:

Mr. Anderson stated Mr. Balfour did not provide a copy of the example he's referring to. He stated if the Committee wants to continue the hearing and give him a copy, he can see what kind of record is being requested. He stated the Offender History Report is not a separate record on its own. He stated UDC does not know what record he is seeking. He stated if the appeal were granted UDC wouldn't know what to provide.

Question from Committee:

The Committee asked if individuals know the categories to choose from so they can be specific. Mr. Anderson stated they do, and the record officer gave several examples of what is found in

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the offender history asking which he wanted. He stated even describing what he was looking for would help.

The Committee asked Mr. Balfour if there are rules around case workers providing records to the inmate. Mr. Anderson stated the procedure is requests are sent to the record officer and the case worker can provide the request form to the inmate.

Deliberation:

Motion by Ms. Cornwall to continue the hearing so the parties can determine specificity per Exhibit J. Seconded by Mr. Williams.

Discussion to the motion

Ms. Cornwall and Mr. Williams expressed concern inmates may not be able to provide a more specific request without knowing what the options are. Ms. Smith-Mansfield thanked the respondent for his offer to continue the hearing.

The Chair asked the Secretary what the schedule looked like for November. It was determined this appeal may be scheduled for December or January.

Aye: 5 Nay: 0. Ms. Smith-Mansfield, Mr. Williams, Mr. Buchanan, Ms. Cornwall, Mr. Haraldsen voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

The Committee sauntered for two minutes.

2. Brady Eames v. Utah League of Cities and Towns

The Chair announced the hearing and provided instructions and reviewed the procedures.

Petitioner's statement:

Mr. Eames welcomed the two new members. He stated the respondent accuses him of wasting government time. He stated he is a watchdog. He stated the public must be able to freely access and inspect public records. He stated he is unaware of any legal authority that limits that. He stated members of the League have not made an oath of office. He stated he should be allowed to attend any open meeting of the board and know the rules of procedure.

Mr. Eames stated per Utah Code 11-13-404(3) the respondent is mandated to adopt and enable him to inspect the rules of order by providing him a paper copy at each meeting or making an online version. He stated the rules are public records.

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Mr. Eames stated the rules are contained in Robert's Rules of Order. He stated this makes them the Board's rules of order and a public record. He stated he is compelled to search for them online and GRAMA does not require him to Google or do research to inspect an online version of a public record. He stated the League should be ordered to provide the Board's rules of order contained in Robert's Rules of Order.

Respondent Statement:

Mr. Jarvis stated Mr. Eames' request for documentation of rules of order was denied per 63G-2-201(1)(b)(i) and (8) based on previous requests from 2019. He stated the Robert's Rules of Order is the overwhelming standard most entities use for their public meetings and does not maintain an official copy. A question regarding the rules can be asked in numerous places online. It does not exist in possession of the respondent. The rules are widely available online. GRAMA does not require them to do research for him. He stated the Committee should make clear to Mr. Eames records officers are not his research assistants.

Petitioner closing:

Mr. Eames stated the rules of order are part of the League's foundational documents. He stated the respondent should enable him to inspect them online or in the office.

Question from the Committee:

The Committee asked Mr. Eames if there are other records he's asking for besides the rules of order. Mr. Eames stated he assumes Robert's Rules of Order would be considered a foundational document.

Respondent closing:

Mr. Jarvis stated they have provided everything they can. He stated their constitution adopts Robert's Rules of Order but does not specify a specific edition or copy. He stated they searched for an official copy in the office and they do not have it. He stated the Rules are widely used and easy to find online.

Deliberation:

Motion by Mr. Williams to deny the appeal as the respondent has done a sufficient search and all responsive records have been provided. Seconded by Mr. Haraldsen.

Aye: 5 Nay: 0. Ms. Smith-Mansfield, Mr. Williams, Mr. Buchanan, Ms. Cornwall, Mr. Haraldsen voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

3. Steven Onysko v. Division of Drinking Water

The Chair announced the hearing and provided instructions and reviewed the procedures.

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Mr. Onysko requested a motion that Mr. Tonks be disqualified because Mr. Randal is also from the Attorney General's Office. The Chair stated that the attorney representing the Committee is in statute. She asked the Committee if anyone wanted to take up the motion. The motion fails to be taken up by any Committee member.

Mr. Onysko asked if the appellee complied under 35-1-2(5) to bring to the Committee's attention arguments of specificity or the voluminous nature of the records. He stated without that the argument of specificity should not be on the table. Mr. Tonks read the rule to the Committee. The Chair stated the entity's position is that no records have been denied so there may be nothing the Committee needs to review in camera, but that will be determined based on testimony. The Chair stated they need to move forward in good faith on the respondent's statement no records have been denied because at this point the Committee doesn't know anything else. The Chair stated the hearing will proceed and the petitioner should focus on any records which have been denied. Mr. Tonks stated specificity is a separate issue from records being provided to the Committee for in camera review. The Committee can continue a hearing if the Committee needs to review records in camera and the respondent does not have them.

Petitioner's statement:

Mr. Onysko stated he is concerned with the way the hearing is described on the agenda. He stated this is not an issue of fee waiver. He stated he is not requesting a fee waiver. He stated "waiver" is prejudicial because it implies he's asking for something he's not ordinarily entitled to. He stated he's hoping the Committee rules that 63G-2-203 is not applicable in this case and he is entitled to documents without fees under GRAMA.

Mr. Onysko stated he is requesting records related to lead in the drinking water. He stated Utah Code 19-1-306 states what fees are required. He stated it is indisputable that the records exist. He stated specificity is not defined in GRAMA. He stated 19-1-306 re-empts the general provisions of GRAMA. Mr. Onysko stated the Committee has no authority to reconcile the fees. He stated DEQ has not assessed fees under 19-1-306.

Respondent's statement:

Mr. Randal stated the respondent submitted their statement of facts on October first and they have satisfied the procedure rules. He stated this case is simple. Mr. Onysko had a long request which they interpreted to mean he was asking for any record with the Emigration Improvement District also involving the word "lead". He stated that is a difficult search term because it will bring a lot of false positives. He stated they did a search and 10 days after the request they sent a letter to the petitioner that they do not normally maintain paper files people can review. There is a public database where he could access 108 records free of charge. They said they're conducting more searches.

Mr. Randal stated a court case determined entities cannot charge a fee for merely assembling documents if they are only required to retrieve documents from a readily available source. He stated all the records the division could reasonably find were provided. He stated two categories of records are not readily available and still needed to be searched. They are only

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available in PDF and have not been formatted to be searched by keyword. He stated they have not been searched or classified so there is no disputed record to provide the Committee.

Mr. Randal stated most of this request is related to email. He stated the Division is required to use the Department Technology Services to perform email searches. He stated the Division requires being pre-paid for the additional search.

Mr. Randal stated Mr. Onysko is misinterpreting the law. He stated department records fall under GRAMA. The standards of FOIA apply to federal programs where business confidentiality instead of GRAMA. He stated GRAMA allows them to charge actual cost, which is different from a fee charge to support programs.

Petitioner closing:

Mr. Onysko stated he is not throwing out GRAMA, but the GRAMA fees. He stated the fees are set by the EPA document and GRAMA does not alter fees established by other statutes. He stated we all know there is an effort involved in finding documents and being an actual cost or fee is a matter of semantics.

Mr. Onysko stated that a difficult search term is not a reason to deny access to records. He stated that he is hoping the Committee's order will say the Committee does not have authority to determine the fee in that Utah Code 63G-2-203(9) says the Committee cannot let GRAMA alter the fees set by Utah Code 19-1-306. He stated the fees charged should be according to the EPA document.

Mr. Onysko stated all the records he was referred to online are at least five years old and no current records were available.

Respondent closing:

Mr. Randal stated the entity has done a reasonable search. He stated they are not arguing the search term is vague. He stated all records they could reasonably find were provided free of charge and nothing has been withheld. He stated the division has two categories that have not been searched: legacy files and email. He stated reformatting documents and performing the search to look at legacy files is labor intensive and will take an unknown amount of time. He stated searching email requires using DTS and the fee is set by them. He stated after the search is done, there will be many false positives that will be labor intensive. The \$18.00 an hour is a reasonable request.

Questions from the Committee:

The Committee asked if the email request has no limit of date or accounts. Mr. Randal stated the request is across the entire department for any records involving Emigration Improvement District which has other nicknames. He stated it would be a very broad search which will have many unresponsive results. The Committee asked if that would include former employees. Mr. Randal stated that is what he understands the request to include.

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The Committee asked Mr. Onysko if this is a fee waiver case. Mr. Onysko said no. He stated the fee is set by a different statute.

Deliberation:

Motion by Mr. Williams that GRAMA applies to this case and the fees were not used to deny access to records. The issue of an unwarranted denial of a fee waiver is not before the Committee. Seconded by Ms. Cornwall.

Aye: 5 Nay: 0. Ms. Smith-Mansfield, Mr. Williams, Mr. Buchanan, Ms. Cornwall, Mr. Haraldsen voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

The Committee took a break for lunch until 12:30.

Business part 2 of 2

Motion by Mr. Williams to approve the September 24th minutes as amended. Seconded by Mr. Haraldsen.

Aye: 3 Nay: 0. Abstain: 2. Ms. Smith-Mansfield, Mr. Williams, Mr. Haraldsen voted in favor of the motion. Mr. Buchanan and Ms. Cornwall abstained.

Appeals received, declined, notices of compliance, and related action items

The secretary reviewed appeals which had been denied. One appeal scheduled for January had no response from the entity. The respondent has asked the Committee to reconsider scheduling the appeal. The Chair stated sometimes we take the petitioner at their word that there is no response from the entity, but if the respondent has proof they responded to the request, the Committee can take another look at it.

The Committee reviewed letters to the Committee from the University of Utah and from Jeffrey Hunt regarding the hearing and order from September 24th. The Committee stated part of having deliberation in the open is people may disagree with what is said.

Cases in District Court, report

Mr. Tonks reviewed the status of cases in district court.

Committee members' attendance polled for next meeting, format and quorum verification.

The Chair verified a quorum will be present at the November 12th meeting.

Motion to Adjourn

The Chair adjourned the October 8, 2020, State Records Committee meeting at 2:39 p.m.

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This is a true and correct copy of the October 8, 2020, SRC meeting minutes, which was approved on November 12, 2020. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

X /e/ Rebekkah Shaw
Executive Secretary